



DELTA STEWARDSHIP COUNCIL

A California State Agency

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**RE: Notice of Preparation of a Draft Environmental Impact Report for the Plan Bay Area
2040 Regional Transportation Plan/Sustainable Communities Strategy
SCH# 2016052041**

Dear Mr. Noelting:

We have received the Notice of Preparation (NOP) for the Draft Environmental Impact Report (DEIR) for the Plan Bay Area 2040 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS). The Metropolitan Transportation Commission (MTC) proposes to update the Plan Bay Area RTP/SCS, an integrated land use and transportation plan for the nine-county San Francisco Bay Area. The RTP/SCS geographically overlaps portions of counties that are within the Sacramento-San Joaquin Delta and Suisun Marsh, or "the Delta," specifically, portions of Solano County, east Contra Costa County, and a small part of northeast Alameda County.

We appreciate the opportunity to comment on the NOP for the update to Plan Bay Area and provide input regarding how to ensure the continued consistency of the RTP/SCS with the Delta Plan. We are particularly interested in coordinating with you regarding the exemption process for "covered actions" defined in Water Code section 85057.5.

The Delta Plan, adopted by the Delta Stewardship Council (Council) in 2013, is an enforceable plan to further the achievement of the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem, in a manner that protects and enhances the unique values of the Delta as an evolving place (Water Code section 85054). As you may know, Council staff reviewed and commented on the first Plan Bay Area in 2013, and we appreciate the changes made in response to our comments, such as adding suggested mitigation measures to the final EIR.

The Council was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta. To do this, the Delta Plan contains a set of regulatory policies with which State and local agencies are required to comply. The Delta Reform Act specifically established a certification process for compliance with the Delta Plan.

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

This means that State and local agencies that propose to carry out, approve, or fund a qualifying action in whole or in part in the Delta, called a "covered action," must certify that this covered action is consistent with the Delta Plan and must file a certificate of consistency with the Council that includes detailed findings.

Only certain activities qualify as covered actions, and the Delta Reform Act establishes specific criteria and categories for exempting actions from the regulatory authority of the Council. One of the exemptions is for regional transportation plans prepared pursuant Government Code section 65080 (Water Code section 85057.5(b)(3)). Another exemption is for actions within the secondary zone of the Delta that a metropolitan planning organization determines are consistent with its SCS. Such proposed actions are *not* "covered actions" regulated by the Council. Water Code section 85057.5(b)(4) states:

"Covered action" does not include any of the following: ...Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, "consistent with" means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

The ability to exempt certain actions from the Council's certification process provides MTC with a potentially significant role in shaping how development occurs in the secondary zone of the Delta and the way in which planning for metropolitan areas and the Delta are coordinated.

Pursuant to Water Code section 85212, the Council will be required to review the RTP/SCS for consistency with Delta Plan. The law states:

The council shall review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents, including sustainable communities strategies and alternative planning strategies prepared pursuant to Section 65080 of the Government Code, with the Delta Plan. The council's input shall include, but not be limited to, reviewing the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta and reviewing whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs. A metropolitan planning organization preparing a regional transportation plan under Section 65080 of the Government Code that includes land within the primary or secondary zones of the Delta shall consult with the council early in the planning process regarding the issues and policy choices relating to the council's advice. No later than 60 days prior to the adoption of a final regional transportation plan, the metropolitan planning organization shall provide the council with a draft sustainable communities strategy and an alternative planning strategy, if any. Concurrently, the metropolitan planning organization shall provide notice of its submission to the council in the same manner in which agencies file a certificate of consistency pursuant to Section 85225. If the council concludes that the draft sustainable communities strategy or alternative planning strategy is inconsistent with the Delta Plan, the council shall provide written notice of the claimed inconsistency to the metropolitan planning organization no later than 30 days prior to the

adoption of the final regional transportation plan. If the council provides timely notice of a claimed inconsistency, the metropolitan planning organization's adoption of the final regional transportation plan shall include a detailed response to the council's notice.

Comments on the Plan Bay Area 2040 RTP/SCS

Our review of the NOP identified the following areas to consider in order to ensure consistency:

- **Delta Plan Policy G P1 (23 CCR section 5002), Detailed Findings to Establish Consistency with the Delta Plan.** Delta Plan Policy G P1 (b)(2) states, "Covered actions not exempt from CEQA must include applicable feasible mitigation measures identified in the Delta Plan's Program EIR (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective." These mitigation measures can be found in the Delta Plan Mitigation and Monitoring Reporting Program (http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf).
- **Delta Plan Policy DP P1 (23 CCR section 5010), Locate New Urban Development Wisely.** Delta Plan Policy DP P1 is intended to strengthen existing Delta communities while protecting farmland and open space, reserving land for ecosystem restoration needs, and reducing flood risk. In order to be consistent with Delta Plan Policy DP P1, new residential, commercial, or industrial development is permitted only if it is located in areas designated for development in city or county general plans as of the date of the Delta Plan's adoption (May 16, 2013), as reflected in Appendix 7 of the Delta Plan regulations.

Based on our review of Attachment A of the NOP, both the Main Streets Scenario and the Connected Neighborhoods Scenario expect "...the largest share of new housing in Inland, Coastal, Delta communities (35%)" (Page 3), while the Big Cities Scenario expects "...the smallest share of new housing in Inland, Coastal, Delta communities (11%)" (Page 4). Council staff appreciates the land use strategies under the Connected Neighborhoods and Big Cities Scenarios, one of which would call for "...accommodating all new growth within existing urban growth boundaries or urban limit lines, using city boundaries as a limit when a jurisdiction has no expansion limit" (Page 3). One provision of Policy DP P1 limits new development to the area within Contra Costa County's voter-approved urban limit line, except no new residential, commercial, and industrial development may occur on Bethel Island unless it is consistent with the Contra Costa County general plan effective as of May 16, 2013.

The NOP does not contain a land use map to depict the areas of future development under each scenario being considered. Council staff looks forward to seeing a map depicting anticipated areas of new housing, commercial, and industrial development, as part of the preferred plan analyzed in the DEIR. Council staff encourages the MTC, when formulating the Plan's preferred and alternative plans, and especially those plans that would call for large shares of new development in Delta communities, to be mindful

of the boundaries shown in Appendix 7, Figures 7-12 and 7-13, of the Delta Plan regulations (<http://deltacouncil.ca.gov/docs/appendix-7>).

- **Delta Plan Policy ER P3 (23 CCR section 5007), Protect Opportunities to Restore Habitat.** The Delta Reform Act states that lands set aside for natural resource protection should be sufficient to meet the Delta's ecosystem needs (Water Code section 85212), including protection of priority habitat restoration areas. Delta Plan Policy ER P3 calls for protecting opportunities to restore habitat in these areas, which are depicted in Appendix 5 of the Delta Plan regulations (<http://deltacouncil.ca.gov/docs/appendix-5>). As shown in this appendix, two Priority Habitat Restoration Areas (PHRAs), Cache Slough and Suisun Marsh, and a portion of another, Yolo Bypass, lie within Solano County. In addition, two smaller restoration areas that are part of the Western Delta PHRA lie within eastern Contra Costa County.

The NOP refers to Priority Conservation Areas (PCAs) as part of a framework to plan for future growth and meet targets set forth in SB 375. The NOP states, "PCAs are areas of regional significance that have broad community support and are in need of protection. They provide important agricultural, natural resource, scenic, cultural, recreational, and/or ecological values, and ecosystem functions" (Page 2). In addition, one of the land use strategies under the Connected Neighborhoods and Big Cities Scenarios would call for avoiding development on adopted PCAs. However, the NOP does not indicate whether the Suisun Marsh or any other Delta PHRAs are considered PCAs. Please be aware of the boundaries shown in Appendix 5, Figure 5-1 of the Delta Plan regulations when formulating the project's preferred and alternative plans.

- **Delta Plan Policy RR P2 (23 CCR section 5013), Require Flood Protection for Residential Development in Rural Areas.** Land use planning for the project should reduce flood risk, and Delta Plan Policy RR P2 is meant to reduce risk while preserving the Delta's unique character and agricultural way of life. This policy requires protecting new residential development of five or more parcels through floodproofing to a level 12 inches above the 100-year base flood elevation, plus sufficient additional elevation to protect against a 55-inch rise in sea level at the Golden Gate, unless the development is located within the boundaries shown in Appendix 7. In addition, Council staff would like to point out that Delta Plan Policy RR P3 (23 CCR section 5014) restricts encroachment in floodways, and Delta Plan Policy RR P4 (23 CCR section 5014) restricts encroachment in floodplains, including the Yolo Bypass within the Delta. Please refer to the aforementioned maps when formulating the project's preferred and alternative plans.
- **General.** On a more general note, Council staff offers these additional comments regarding ways in which the RTP/SCS can help to achieve the Delta Plan's coequal goals of water supply reliability and ecosystem restoration, while protecting and enhancing the Delta as an evolving place.
 - **Water supply reliability.** The Delta Plan's legally binding policies and most of its recommendations related to water supply reliability are directed primarily at water suppliers and state and federal agencies. However, there is strong evidence that

compact growth reduces per capita water demand, as well as water supply infrastructure costs. Council staff appreciates the Connected Neighborhoods and Big Cities Scenarios, which would avoid development on adopted PCAs, increase development capacity in or near areas served by existing transit systems, and accommodate all new growth within existing urban growth boundaries or urban limit lines, thereby producing a more compact urban form and less demand for new water supply infrastructure.

- **Protecting the Delta as Place.** The Delta Plan provides guidance regarding protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta. To ensure protection and enhancement of Delta values, the preferred and alternative plans should consider providing adequate infrastructure to meet development needs, consistent with sustainable communities strategies and other relevant plans, as encouraged by Delta Plan Recommendation DP R5. In addition, please note that Delta Plan Recommendations DP R8 and DP R9 encourage promoting value-added crop processing and agritourism, respectively, while Delta Plan Recommendation DP R17 supports enhancing opportunities for visitor-serving businesses.

Comments on the NOP

Based on our review of the NOP for the Plan Bay Area 2040 RTP/SCS, we recommend the following matters be discussed or included in the DEIR:

- **Inconsistencies with the Delta Plan.** The DEIR should discuss any inconsistencies between the proposed project and applicable regional plans, such as the Delta Plan, as required by 15125(d) of the California Environmental Quality Act (CEQA) Guidelines. Please note that the CEQA Guidelines' Appendix G indicates that a project that is inconsistent with any applicable land use plan, policy, or regulation may result in a finding of significant impact on the environment.
- **Land Use and Planning.** In the DEIR, please cite Delta Plan Policy DP P1 (23 CCR section 5010). Should any significant impacts to land use and planning be identified in the DEIR, please consider including the applicable Land Use and Planning mitigation measures of the Delta Plan Mitigation and Monitoring Reporting Program to avoid, minimize, or mitigate those impacts. (See Mitigation Measures 6-1, 6-2.)
- **Biological Resources.** Please clarify in the DEIR whether the PHRAs shown on Figure 5-1 are considered PCAs or lie within any PCA boundaries. Also please consider adding the regulatory policies and recommendations of the Delta Plan to the Biological Resources Regulatory Setting section of the DEIR. Delta Plan Policy ER P3 (23 CCR section 5007) calls for protecting opportunities to restore habitat. In the DEIR, please cite Delta Plan Policy ER P3 and describe how any potential conflicts with the policy, such as road construction, can be avoided or mitigated. Figure 4-7 of the Delta Plan depicts three examples of how projects can comply with ER P3, two of which may be relevant to the RTP/SCS:
 - Locate structures at the edge of a habitat restoration area, rather than in the middle, to improve opportunities for restoring habitat connectivity.

- Elevate structures so that water can flow underneath to allow for restoration of aquatic habitat dependent on tides or periodic flooding.
- **Hydrology and Water Quality.** In the DEIR, please analyze and discuss whether urbanization of agricultural and open space, if any is proposed under the preferred and alternative plans, could produce an increase in flood risk, and describe how that risk could be avoided, minimized, or mitigated. Please consider including the applicable Delta Flood Risk mitigation measures of the Delta Plan Mitigation and Monitoring Reporting Program. (See Mitigation Measures 5-1 through 5-5.)

Council staff looks forward to working with you to ensure consistency between the Plan Bay Area 2040 RTP/SCS and the Delta Plan, so that the two plans are complementary and serve to protect the Delta while promoting sustainable growth and reducing greenhouse gas emissions in the broader region. I encourage you to contact Jeff Juarez at jeff.juarez@deltacouncil.ca.gov or (916) 445-5528 with your questions, comments, or concerns.

Sincerely,



Cassandra Enos-Nobriga
Deputy Executive Officer
Delta Stewardship Council